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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 2716 of 2006

PETITIONER NON-APPLICANT	Balam Sai, son of Thakur Ram, aged about 60 years, resident of Village Nakna, Mohalla Majhapara, Tahsil Surajpur, District Sarguja (CG).
	Versus
RESPONDENT APPLICANT	Ram Narayan, son of Lakhan, resident of Village Nakna, Mohalla Majhapara, Tahsil Surajpur, District Sarguja, CG.

Post for order 23-4-2007

Sd/-
Satish K.Agnihotri
Judge

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Versus

RESPONDENT APPLICANT	Ram Narayan, son of Lakhan, resident of Village Nakna, Mohalla Majhapara, Tahsil Surajpur, District Sarguja, CG.

(Petition under Article 227 of Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihot

Present:

Shri H.B. Agrawal, Sr. Advocate with Shri J.K. Gupta, counsel for the petitioner.
Shri Raghvendra Pradhan, counsel for the respondent.

ORDER

(Passed on 23rd April, 2007)

By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the legality and validity of the order dated 27-5-2005 (Annexure P/8) passed by Naib Tahsildar, Surajpur, the order dated 16-12-2005 (Annexure P/9) passed by Additional Collector, Surajpur, Ambikapur, confirming the order passed by Naib Tahsildar and the order dated 2-5-2006 passed by the Board of Revenue (Annexure P/10), confirming the order dated 27-5-2005 (Annexure P/8) passed by Naib Tahsildar, Surajpur as well as the order dated 16-12-2005 (Annexure P/9) passed by Additional Collector, Surajpur, as not being in accordance with law.

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2. The indisputable facts, in nutshell, are that the respondent made an application before Naib Tahsildar, Surajpur, under Section 131 of the Chhattisgarh Land Revenue Code, 1959 (for short, "the Code") seeking right of way on the disputed land where the petitioner and one Lalit Ram Rajwade had constructed wall to obstruct the route of the respondent to have access to his field. Naib Tahsildar, vide his order dated 27-5-2005 rejected the application holding that the suit filed by the petitioner before Civil Judge, Class II, Surajpur, for the same dispute and no order in the application under Order 39, Rule 1 & 2 of the Code of Civil Procedure was passed. Thus, the Revenue Authority, cannot pass the order directing the petitioner to remove the wall constructed on the disputed route.

3. Being aggrieved, the petitioner filed a revision before the Additional Collector, Surajpur. The Additional Collector, Surajpur, vide his order dated 16-12-2005 (Annexure P/9) dismissed the revision holding that the Naib Tahsildar has not committed any mistake in passing the order. There was no ground to interfere with the order dated 27-5-2005 (Annexure P/8) passed by Naib Tahsildar.

4. Being aggrieved and dissatisfied with the order passed by the Additional Collector, the petitioner filed a revenue revision under Section 50 of the Code before the Board of Revenue. The Board of Revenue vide its order dated 2-5-2006 after having considered all the aspects of the matter held as under and dismissed the revision.;

> उभय पक्ष के विद्वान अधिवक्ताओं द्वारा प्रस्तुत तर्कों एवं न्यायिक दृष्टांतों को गंभीरता से मनन किया गया। अतिरिक्त कलेक्टर, सरगुजा के प्रकरण क. 149/अ–13/2004–05 एवं नायब तहसीलदार, रामानुजनगर के प्रकरण कमांक 03/अ–13/2004–2005 के मूल रिकार्डों को गंभीरता से अध्ययन किया गया। अतिरिक्त कलेक्टर ने अपने निष्कर्ष में विस्तृत रुप से व्यवहार न्यायालय से संबंधित तथ्यों एवं वैधानिक वाद बिन्दुओं का खुलासा किया है तथा नायब तहसीलदार द्वारा

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की गई कार्यवाही को विधि सम्मत पाया है। दोनो अधीनस्थ न्यायालयों के समवर्ती निष्कर्ष है। समवर्ती निष्कर्ष वाले आदेशों में तभी हस्तक्षेप किया जा सकता है जब कोई गंभीर वैधानिक या तथ्यात्मक त्रुटि हो। आवेदक की ओर से तर्क के समय इस प्रकार का कोई ठोस वैधानिक वाद बिंदु या तथ्य नहीं बतलाया गया है ओर न ही जैसा कि अनावेदक के विद्वान अधिवक्ता ने अपने तर्क के समय यह बतलाया है कि अतिरिक्त कलेक्टर के आदेश में क्या अवैधानिकता है, इस संबंध में आवेदक कोई वाद बिन्दु बतलाने में समर्थ रहा है। प्रकरण का समग्र रुप से सूक्ष्म विवेचन करने के पश्चात् अपर कलेक्टर, सरगुजा के प्रकरण कमांक 149/अ–13/2004–2005 में पारित आदेश दिनांक 16.12.2005 विधि सम्मत पाया जाता है, अतः उसे स्थिर रखा जाता है। प्रस्तुत पुनरीक्षण निरस्त किया जाता है।

5. The petitioner has filed this petition impugning the above stated orders passed by the Revenue Authorities whereunder the Revenue Authorities declined to remove the alleged wall constructed over the route land on which the petitioner is claiming right of way.

6. Admittedly, Civil Suit No.51-A/2005 (Balam Sai Vs. Ram Narayan and another) for permanent injunction was pending consideration before Civil Judge, Class II, Surajpur, and the Revenue Authorities having exercised their jurisdiction under Section 131 came to the conclusion that for the same relief to remove the wall, the petitioner has filed an application under Order 39, Rule 1 and 2 of the CPC and no order was passed on the said application. Therefore, the Revenue Authorities did not find it proper to pass any order which may amount to over-reaching the jurisdiction of the Civil Court. Even otherwise, the Revenue Authorities, while exercising their power have to find out that the essential fact that has to be pleaded and proved that the right of way claimed is a customary right exercised openly and without obstruction otherwise than by permission. The Tahsildar is required to decide the same with reference to custom and convenience of all parties concerned. The facts are disputed as maps filed by the Authorities are also contradictory, therefore, it is necessary

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that the dispute should be resolved by the Civil Court after examining the documents and other evidences adduced before the Civil Court.

7. I have heard learned counsel for the parties, perused the pleadings, documents and the impugned judgment appended thereto. I do not find any infirmity, illegality or jurisdictional error in the impugned judgment/order passed by the Revenue Authorities.

8. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

9. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the decision passed by the Court below.

10. Thus, this petition is dismissed. No order as to costs.

Raju

Sd/-
Satish K.Agnihotri
Judge